

Application No. 10/081,674
Amendment dated October 21, 2004
Reply to Office Action of June 21, 2003

REMARKS/ARGUMENTS

Responsive to the Official Action mailed June 21, 2004, applicants have further amended the claims of their application in an earnest effort to place this case in condition for allowance. Specifically, claims 6 and 7 have been canceled, and claims 1, 16, and 24 amended. Reconsideration is respectfully requested.

In the Action, the Examiner rejected a number of the pending claims, referring to the language in these claims including the transitional phrase "consisting of." Applicants' appreciate the Examiner's reference to M.P.E.P. Section 2111.03 in this regard.

Accordingly, applicants have carefully revised their claims to specify, such as in claim 1, that the present protective cover for agricultural products is *formed from a single-ply of nonwoven fabric*, with the nonwoven fabric, in turn, *consisting of spunbond thermoplastic polymeric filamentary elements*. By these revisions, it is believed that dependent claim 8, specifying the cover as comprising at least one means for affixing the protective cover, is in good form, since the claim is intended to specify formation of the cover from a single ply of nonwoven fabric, with the fabric *consisting of* the recited polymeric filamentary elements.

Also consistent with this claim language are dependent claims 12-15, which more particularly recite the *polymeric filamentary elements*. This is consistent with the requirements of M.P.E.P. Section 2111.03, in that the nonwoven fabric *consists of* the

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recited polymeric filamentary elements, with more preferred forms of the filamentary elements recited in the dependent claims.

Additionally, claim 24 has been revised to refer to the recited "step of forming a tube" as set forth in claim 23 from which claim 24 depends.

Accordingly, it is believed that the rejection under 35 U.S.C. §112 may be withdrawn.

In rejecting the pending claims under 35 U.S.C. §103, the Examiner has continued to rely upon Japanese Patent No. 11-229260 to Matsunaga, in view of newly applied U.S. Patent No. 4,340,563, to Appel et al., in further view of Japanese Patent No. 4021173228 to Harada et al., and U.S. Patent No. 6,061,954, to Vanier et al. However, it is respectfully maintained that applicants' admittedly novel protective cover is clearly patentably distinct from these references, even when combined, and accordingly, the Examiner's rejections are respectfully traversed.

In the Action, the Examiner specifically acknowledges that the principal Matsunaga reference fails to disclose the formation of a protective cover for agricultural products formed from spunbond polymeric filamentary elements, as claimed, and that this reference fails to teach an important aspect of the present invention, that is, the formation of a portion for altering light transmission through the cover by the provision of *printing on the cover to occlude light transmission therethrough*. In light of these admitted deficiencies in the teachings of the principal reference, applicants respectfully

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refer to the provisions of M.P.E.P. Section 2143.01, which sets for the requirements for a proper rejection under 35 U.S.C. §103.

In light of this admitted deficiency in the teachings of the principal Matsunaga reference, the Examiner relies upon the teachings of Appel et al. However, applicants must respectfully maintain that Appel et al. *does not include any teachings relating to forming an agricultural cover from spunbond polymeric filamentary elements*. As such, it is respectfully maintained that this reference simply *cannot* overcome the deficiencies in the teachings of the principal Matsunaga reference. As specifically admonished by the M.P.E.P., the "fact that references can be combined or modified is not sufficient to establish *prime facia* obviousness" (citations omitted). Moreover, the M.P.E.P. further specifically admonishes that the "proposed modification cannot render the prior art unsatisfactory for its intended purpose." The stated purpose of the principal Matsunaga reference is to provide a "biodegradable" weed controlling sheet, yet there is *no teaching or suggestion in Appel et al. that the nonwoven webs disclosed therein are biodegradable*.

Thus, applicants must respectfully maintain that only their own disclosure would teach or suggest to one skilled in the art to modify the teachings of Matsunaga in accordance with the Appel et al. patent.

It is also believed that the Harada et al. reference relied upon by the Examiner fails to overcome the admitted deficiencies in the teachings of the principal Matsunaga

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reference. Harada discloses a cover including "a marker capable of detecting the increase or decrease of temperature . . . made of a temperature-indication material" comprising a heavy metal ion. There is no teaching or suggestion whatsoever in this reference of providing *printing to occlude light*. Applicants must respectfully maintain this is a significant shortcoming in the teachings of Harada et al., since of the three diverse references relied upon by the Examiner, *none of the references* teach the formation of an agricultural protective cover including a portion for altering light transmission therethrough. From the vague and general description in the Harada et al. reference relied upon by the Examiner, it is not at all clear whether the "marker" is capable of any light occlusion, is sized to provide light occlusion, or positioned to provide light occlusion, in accordance with applicants' pending claims. It is respectfully maintained that it is inappropriate to extrapolate such vague and general teachings into a rejection under 35 U.S.C. §103.

In the Action, the Examiner has relied upon the combined teachings of Matsunaga, Appel et al., and Harada et al. in rejecting a number of applicants' pending dependent claims, yet it is respectfully maintained that the features set forth in these dependent claims are simply not suggested or taught at all, even in the combined teachings of these references. For example, with respect to claim 8, specifying that the recited cover comprises at least one means for affixing, no such teaching is at all apparent from any of the cited references; such a teaching is clearly not present in Appel et al. or Harada et al., and given the stated purpose of the principal Matsunaga

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reference, that is, a biodegradable weed controlling sheet, it is not apparent that such a "sheet" would include any "means for affixing," but rather would be merely placed on the ground. Similarly, there is no reason to understand that these references would teach the provision of "a seam," as recited, and applicants must respectfully maintain that the Examiner's statement that "covers are well-known to have seams," is simply not supported by the teachings of the references themselves. Similarly, features recited in claims 12-15 do not appear to be taught nor suggested by the cited references, in an absence of such, a bald assertion that such features are "well-known" cannot provide a meaningful basis for rejection of these claims under 35 U.S.C. §103.

In connection with applicants' claimed method as set forth in claim 26, the Examiner further relies upon the Vanier reference. However, applicants must respectfully maintain that Vanier *does not* "inherently disclose the method steps recited in claim 23." As previously noted, Vanier is limited in its teachings to the formation of a cover comprising a *multi-layer plastic film*, with the cover being disclosed in the form of "a cylinder" (column 5, line 11). One skilled in the art reading this reference would assume that the disclosed plastic film is extruded in a cylindrical shape. Thus, this reference cannot properly be relied upon to "inherently disclose" applicants' claimed method, including the steps of "forming a tube from nonwoven fabric by joining together edge portions thereof."

Applicants must respectfully maintain that overcoming the deficiencies in the relied-upon references by merely stating that such deficiencies are "well-known" or

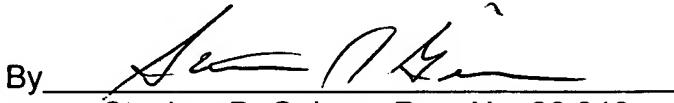
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"inherently disclosed" cannot provide a proper basis for a rejection under 35 U.S.C. §103. There is no issue but that applicants' claimed agricultural protective cover, and method, are novel, and the mere fact that the references "can be combined or modified is not sufficient to establish *prime facie* obviousness" as specifically provided by the M.P.E.P.

Thus, formal allowance of claims 1, 8, 9, 12-16, 18, 23 and 24 is believed to be in order and is respectfully solicited. Should the Examiner wish to speak with applicants' attorneys, they may be reached at the number indicated below.

The Commissioner is hereby authorized to charge any additional fee which may be required in connection with this submission to Deposit Account No. 23-0785.

Respectfully submitted,

By 
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CERTIFICATE OF MAILING

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage at First Class Mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on October 21, 2004.

